crime, the weight of such evidence to be determined by the jury in the light of all the surrounding circumstances. *Pedigo* v. *Commonwealth,* 103 Ky. 41, 44 S. W. 143, 42 L. R. A. 432, 82 Am. St. Rep. 566; *State* v. *Adams,* 85 Kan. 435, 116 Pac. 608, 35 L. R. A. N. S. 70; *Carter* v. *State,* 106 Miss. 507, 64 So. 215, 50 L. R. A. N. S. 1112; *Hargrove* v. *State,* 147 Ala. 97, 41 So. 592, 10 Ann. Cas. 1126; *State* v. *Norman,* 153 N. C. 591, 68 S. E. 917. For a full collection of cases see notes to 42 L. R. A. 432; 35 L. R. A. N. S. 870; Ann. Cas. 1912D 39; Ann. Cas. 1915A 1193. The ruling in the principal case seems indicative of a modern tendency to hold this kind of evidence inadmissible,—at least in northern jurisdictions.

EVIDENCE—EXCLUSION OF TESTIMONY AS TO HOW LIBEL MADE LIBELED PERSON FEEL.—Plaintiff, a minister, sued defendant for a libel contained in defendant's newspaper, calling the plaintiff an "interloper, a meddler, and a spreader of distrust, discontent and sedition." A witness for the plaintiff was asked how this libelous matter seemed to make the plaintiff feel. *Held,* that the answer was properly excluded because it called for the opinion of the witness. *Van Lonkhuyzen* v. *Daily News Co.* (Mich. 1917), 161 N. W. 979.

A search of the authorities discloses that only one jurisdiction, Alabama, follows the instant case. In *McAdory* v. *State,* 59 Ala. 92, in a prosecution for arson it was held error for a witness to state that the defendant "looked downcast," because it was merely a statement of the witness's opinion. To the same effect, in *Johnson* v. *State,* 17 Ala. 618, the court held it error for a witness to say "the prisoner looked serious, although habitually a lively man." In neither case did the courts give satisfactory reasons, but simply called it opinion evidence. Seemingly all the other authorities, for cogent reasons, take the opposite view. In *State* v. *McKnight,* 119 Ia. 79, 93 N. W. 63, the court held it proper for a witness to testify that the deceased when sick "appeared to be despondent" and "did not seem hopeful," without stating the facts upon which he based his opinion, on the theory that it was mixed fact and opinion. In *State* v. *Bradley,* 64 Vt. 466, 24 Atl. 1053, a witness was permitted to testify that when accused of the crime the defendant "seemed kinder worried," because it is more a statement of a fact than of an opinion. In *Fritz* v. *Hudson Union Tel. Co.,* 25 Utah 263, 71 Pac. 209, the statement "he looked at me in a disgusted way" just before his accident, was held to be a fact, not an opinion. In *State* v. *Wright,* 112 Ia. 436, 84 N. W. 541, it was held error to exclude the statement that the defendant "looked queer." These statements are of exactly the same character as the answer to the question in the instant case. The question would at most, call for a mixed answer of fact and opinion and it seems, according to the authorities, should have been answered. But even admitting that the answer called for an opinion purely, it still should have been admitted. One of the exceptions to the opinion rule allows a layman even to give an opinion where it is practically impossible for the witness to make the jury see and hear what he saw and heard, by reciting the facts without

giving his opinion. This is precisely such a case. The witness could not describe the appearance of the plaintiff to the jury to show how it made him feel, as well as he could inform the jury by his own impression from seeing the plaintiff. The exception to the opinion rule should have been applied, and the evidence admitted.

EVIDENCE—EXPERT MEDICAL TESTIMONY BASED ON BOTH OBJECTIVE AND SUBJECTIVE SYMPTOMS.—The plaintiff, a street car conductor, sued the defendant railroad company for personal injuries received by reason of defendant's negligence. Several weeks after the injury plaintiff was examined by a physician for the purpose of qualifying him as an expert witness. The physician based his diagnosis both on physical examination and on the history of the injuries and their causes as related by the plaintiff; and on the trial he was allowed to state his opinion based on both the objective and the subjective symptoms. *Held,* that the expert opinion formed by the intelligent diagnosis of both the objective symptoms and the history of the case, including the causes of the injuries, were properly admitted, though not part of the res gestae. *St. Louis & S. F. R. Co.* v. *McFall* (Okla. 1917), 163 Pac. 269.

The above case takes an extremely liberal view, making no distinction between an attending physician and one examining for the express purpose of testifying for the plaintiff. There are cases in Alabama, California, Indiana, Massachusetts, New Jersey, Texas, Vermont, and Wisconsin, holding with the instant case. They go on the theory that a history of the case is usually necessary to reach a correct intelligent diagnosis, which is as important in the case of an expert witness who is to render an opinion, as for an attending physician who is to administer medicine. See *Quaife* v. *The Chicago & N. W. R. R. Co.,* 48 Wis. 513; *Missouri, K. & T. Ry. Co.* v. *Rose,* 19 Tex. Civ. App. 470; *People* v. *Shattuck,* 109 Cal. 673, 42 Pac. 315. A number of states allow past history as basis of the opinion, when stated to an attending physician, but exclude it when given to a physician for the express purpose of qualifying him to testify, on the theory that in the latter case the plaintiff is liable to make dangerous self-serving statements. See *Hintz* v. *Wagner,* 25 N. D. 110, 140 N. W. 729; *Grand Rapids & Ind. R. Co.* v. *Huntley,* 38 Mich. 537, 31 Am. Rep. 321; *Darrington* v. *N. Y. & N. Eng. R. Co.,* 52 Conn. 285, 52 Am. Rep. 590; *James Edward* v. *Illinois Central R. R. Co.,* 161 Ill. App. 630; *Divine* v. *Rothschild,* 178 Ill. App. 13. Statements made to a physician called to treat a patient are usually very dependable; for the patient is anxious to give the physician a true version of the history of the case and of his present condition to enable the physician to make a correct diagnosis. But statements made to a physician called for the purpose of qualifying him as an expert witness are very apt to include all that is favorable to the plaintiff's case and exclude all that is detrimental. Besides there is always the possibility that the patient has given a fraudulent version of his case. There is a tendency to make statements to such a physician strongly self-serving. A few states hold that a physician may base